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November 12, 2009

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
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Washington, D.C. 20463

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OFFICE OF GENERAL
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Re: Matter Under Review 6215 (Dwayne Miller)

Dear Mr. Jordan,

On behalf of our client, Dwayne Miller, I am writing in response to Randy Spitzmesser's complaint filed with the Commission on September 28, 2009. By the Commission's letter dated October 20, 2009, the time for this response was extended to the close of business on November 19, 2009. As counsel for Mr. Miller, I respectfully request that the Commission find no reason to believe a violation has occurred with respect to Mr. Miller, and take no further action in this matter. See 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.6(a).

Factual Background

Mr. Miller is the president and minority owner of JBA Consulting Engineers, Inc. ("JBA"), an engineering consulting firm incorporated in the State of Nevada. (See Declaration of Dwayne Miller ("Miller Decl.") ¶ 1, Nov. 9, 2009.) He is not a Tate Snyder Kimsey Architects, Ltd. ("TSK") employee, but his company has worked with TSK for several years. (*Id.* ¶ 2.) Both firms collaborate on various design projects in the construction industry. Mr. Miller estimates that a modest percentage of JBA's business involves projects with TSK. (*Id.*)

Mr. Miller speaks regularly with Windom Kimsey, his primary contact at TSK, and has a strong peer-to-peer working relationship with him. (*Id.* ¶ 3.) In January 2009, Mr. Kimsey telephoned Mr. Miller and asked whether he would be interested in attending a fundraising luncheon Mr. Kimsey helped organize for United States Senator Harry Reid. (*Id.* ¶ 3.) The event was to be held at Wolfgang Puck Café at the Las Vegas Springs Preserve in Las Vegas on February 17, 2009. (*Id.*) After their conversation, Mr. Kimsey emailed a copy of the event invitation to Mr. Miller for his further consideration. (*Id.* ¶ 4, Ex. A.) The invitation suggested that event participants contribute a minimum of \$1,000 to the Reid campaign. (*Id.*)

Mr. Miller decided to contribute to his campaign committee, and attend the luncheon event. (*Id.* ¶ 5.) On or about February 2, 2009, Mr. Miller wrote a check for \$1,000 to Friends for Harry Reid, which was drawn from his personal funds in his personal bank account. (*Id.* ¶ 5.) Mr. Miller delivered the contribution directly to the Reid campaign, but does not recall whether he completed the contributor invitation form that accompanied Mr. Kimsey's invitation. (*Id.* ¶¶ 4-5.)

Mr. Miller was not reimbursed for his contribution, nor did he seek or receive an offer for a reimbursement. (*Id.* ¶ 7.) Mr. Miller contributed voluntarily to the Reid campaign, and not because of any influences related to his business relationships. (*Id.* ¶ 6.) Specifically, Mr. Miller did not receive a warning from TSK personnel that JBA's professional relationship with TSK could be affected if he failed to contribute Senator Reid's campaign. (*Id.*)

Analysis

Mr. Miller has not been identified by Mr. Spitzmesser as a potential Respondent in this matter, and he did not violate campaign finance laws by contributing to Senator Reid's campaign. As explained above, Mr. Miller received a telephone call and email invitation to Reid event from Mr. Kimsey, and voluntarily contributed \$1,000 to the Reid campaign. (*Id.* ¶¶ 3-5.) Mr. Miller was not reimbursed for his contribution, and did not request or receive an offer for one. (*Id.* ¶ 7.)

Mr. Miller was not pressured to contribute to Senator Reid's campaign by Mr. Kimsey, or any other TSK partner or employee. (*Id.* ¶ 6.) As a threshold matter, Mr. Miller maintains a peer relationship with Mr. Kimsey, and his business engages in collaborative work with TSK. (*Id.* ¶¶ 2-3.) Furthermore, Mr. Miller is not an employee of TSK, and his business relies on only a small percentage of projects with TSK. (*Id.* ¶¶ 1-2.) Thus, Mr. Spitzmesser's claim that TSK would have threatened Mr. Miller by eliminating work with JBA is unavailing. (Compl. ¶ 3, Sept. 28, 2009).

Finally, Mr. Miller did not "fraudulently" disclose information about his employer and occupation to the Reid campaign in order to meet TSK's minimum contribution threshold. (Compl. ¶ 4, Miller Decl. ¶ 8.) Mr. Miller does not recall whether he completed the contributor information card that accompanied Mr. Kimsey's email invitation to the Reid fundraising luncheon. (Miller Decl. ¶ 4.) Nevertheless, he did not represent to the Reid campaign that he was employed by TSK, or identify himself as an architect. (*Id.* ¶ 8.)

Because there are no factual bases for Mr. Spitzmesser's allegations against Mr. Miller, we respectfully request that the Commission find no reason to believe he has committed a violation federal campaign finance law, and close the matter with no further action against him.

Jeff S. Jordan, Esq.
November 12, 2009
Page 3

If you have questions or require additional information, please do not hesitate to contact me at (202) 756-8333.

Respectfully submitted,


Stephen M. Ryan (be)

(1) Enclosure

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